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My Turn

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The CIA vs. Me

Last November, when my highly critical account of the American evacuation of Vietnam appeared on the stands, I never dreamed I would be dragged into court by the government, denied my profits and stripped of my right ever to write again about my experiences in Vietnam or the CIA without official approval. Yet all of this has happened and I now find myself in the center of a crucial test case of the First Amendment.

During my recent trial in a Virginia Federal district court, the lawyers for the Justice Department claimed I had violated a "public trust" and a "contract," a 1968 secrecy agreement with the CIA, by publishing my book without authorization. But not once did they accuse me of leaking secrets or even less sensitive information that had not already been revealed by the CIA.

Nor has the government seen fit to acknowledge that a second secrecy agreement I signed when I left the CIA in 1976 significantly modified the first. The later agreement did not obligate me to submit everything I might write for review. It merely put me on notice to protect the nation's secrets by exercising my own common sense and judgment.

AGREEMENT AND APPROVAL

The Justice Department's lawyers, however, have pretended that my second agreement is meaningless and have based their case solely on the earlier one. That agreement did forbid me to write or say anything about "intelligence activities generally" without CIA approval. But because of the sweeping character of this prohibition, it was never enforced. I did write uncensored letters to my family from Saigon; I did provide countless briefings to the press in Vietnam without having to clear my remarks beforehand. Furthermore, agency veterans such as Miles Copeland and Tom Braden frequently wrote about their professional experiences without CIA clearance and they were never sued. (Admittedly, former CIA employee Victor Marchetti was hauled into court in 1972 and prohibited from writing without CIA approval, but only after the agency had convinced the court that he had violated the ban against disclosure of classified information.)

No wonder, then, that when I left the CIA in 1976 I felt the government had no right to demand...

convinced of this because the CIA had betrayed its obligations to me under my original secrecy agreement. In exchange for my signing that document, the CIA had promised to address any complaints I might have about its operations. But when I returned from Vietnam in 1975 and tried to register my concerns about the evacuation with the proper authorities, no one wanted to listen.

As a way of getting the truth out, I sought CIA support for a book about the evacuation, but my superiors told me they would never sanction any book by a present employee that was critical of the agency. Meanwhile, I discovered that senior CIA officers were leaking their own self-flattering accounts of Saigon's final agonies to the press, sometimes using classified information whose very disclosure potentially endangered Vietnamese we had left behind. That did it for me. I resigned in protest.

In the course of my trial, most of these facts were somehow lost. Moreover, when CIA director Adm. Stansfield Turner took the stand to spell out the "damage" I had done to the agency with my unclassified disclosures, my lawyers from the American Civil Liberties Union were unable to pin him down. He would say only that books such as mine lessened the public's confidence in the agency's ability to keep secrets. Former director William Colby, in testimony of his own, went further, claiming that even "cleared" books and Congressional investigations can have this effect. Are we to stifle responsible criticism to save the CIA from embarrassment? Are we to gag Congress to protect the CIA's image?

'ILL-GOTTEN' GAINS

In the end the judge declared that I deserved to lose all my "ill-gotten" gains because I had violated an implicit "public trust" (not merely a secrecy agreement, mind you) to earn them. He did not find it necessary to reconcile that judgment with the fact that many others have done virtually the same thing. Hundreds of prominent Americans, from Thomas Jefferson to George Kennan, have written critically of official policies after serving the government in positions of trust and have been paid for their efforts. Other public servants have mined the knowledge they gained at the public's

Asia Division, now is a well-paid lobbyist for Japan, and Henry Kissinger intersperses work on his own multimillion-dollar memoirs with public lectures that net him thousands of dollars each year. These men have not been sued for exploiting a public trust for money.

I believe the Justice Department and the Carter Administration are treating me differently in order to intimidate those in the CIA who would speak out against official wrongdoing. They are using my case to establish a precedent for punishing those who will not toe the company line.

DISCIPLINARY PRECEDENT

Turner claims he needs this precedent to enforce discipline in the CIA and to ensure that secrets are kept. But if the higher courts agree with him, the chill will be felt far beyond CIA ranks. The Justice Department will be free to muzzle and to break financially any Federal employee in a "position of trust" who dares to call the Administration on its mistakes, even if he exposes no secrets and has signed no secrecy agreement.

No doubt, the CIA must find some way to protect legitimate secrets. Perhaps the most sensible solution would be for Congress to enact a law that would prescribe stiff criminal penalties for any employee of a security agency who leaks secrets harmful to an intelligence source or method. Under this rule a would-be author from the CIA, the State Department or the Pentagon would be able to write what he wanted without having to submit his manuscript for clearance—but always with the understanding that if he disclosed classified information he would face a terrible reckoning. This would not, of course, prevent someone bent on treason from revealing national secrets (nor, for that matter, would the court's ruling against me). But it would serve to reconcile, in the only conscionable way, the demands of national security and the imperatives of the First Amendment.

Snepp, a former CIA official in Saigon, wrote "Decent Interval," a book about the CIA's alleged mistakes